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No. 97-561

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1996

LENORA SPAIN, LOUIS HOMESY, WALTER KOZA, THOMAS RICHARD, WILLIAM NAULT, MATTHEW DEMAS, MICHAEL ADAMS, MICHAEL GROVE, LISA HAWKINS, GARY CASTIGLIONI, CHERYL ADAMS, THOMAS RICHARD, MELISSA RAPA, RICHARD WAUGH, WELDON ADAMS, RONALD RING, PATRICIA ADAMS, ELIZABETH TARGEE, MATHEW VAN WINKLE, BRENT ADAMS, ROBERT RAVITZ, TINA LEVESQUE, CARRIE BURKE, WILLIAM CONNORS, DAVID TAYLOR, CHRISTOPHER MORRIS AND KATHLEEN MARTINS,

Petitioners,

vs.

DEMETRIOS HASEOTES, JOHN DROLETTE, ROBERT LANGFORD, JAMES MUMMA, APRIL GREEN, LILY BENTAS, BRYON HASEOTES, JOHN PECK, GEORGE HASEOTES, PETER PANTAZELOS, MARK CURRIER, MARGE OLSEN, WENDY OLSEN, DENNIS O'SULLIVAN, FRANCIS LOCKLIN, JR., FRED BEISSNER AND HARRIET ANTHONY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF FOR PETITIONERS

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PETITIONERS CLEARLY AND UNEQUIVOCALLY RAISED THE ISSUE OF ACCRUAL IN THE COURT BELOW, THE FIRST CIRCUIT.

In their Brief for Appellants at pages 34-35 the petitioners stated as follows:

> Not until the summer of 1990, when the news media exposed the CFI scheme, could the employee/ victims discover the facts. That is when their cause of action accrued. *Bowen v. Eli Lilly & Co.*, 408 Mass. 204, 208, 557 N.E. 2d 739 (1990). The defendants' concealment of the facts constitutes fraudulent concealment and tolls the statute of limitations. *Shane v. Shane*, 891 F.2d 976, 985 (1st Cir. 1989). Plaintiffs' claims accrued only when the plaintiffs discovered the connection between their harm and the CFI scheme. *Fidler v. E.M. Parker Co.*, 394 Mass. 534, 546, 476 N.E. 2d 595 (1985). Only when the employees learned of the same happenings to other CFI employees could they learn of the causal link between the defendants' conduct and their harm.

PETITIONERS ARGUED IN THEIR BRIEF FOR APPELLANTS IN THE COURT BELOW THAT COLLATERAL ESTOPPEL AND RES JUDICATA CANNOT BE APPLIED TO THEIR RICO CLAIMS WHERE THERE WAS NO FINAL JUDGMENT IN PREVIOUS ACTIONS.

Contrary to the representations of the respondents in their brief in opposition, there has been no judgment of dismissal in *Adams v. Cumberland Farms, Inc.*, No. 91-10627-S, in *Ring v. Haseotes*, No. 93-10051H, or in *Salvatore v. Cumberland Farms, Inc.*, No. 95-11170-EFH. Judge Harrington denied the

respondents motions for summary judgment in the *Ring* case (Appendix). There was no judgment. In the *Adams* case Judge Skinner remanded the case to the state court from which the respondents had removed it before final judgment. The doctrines of claim preclusion and issue preclusion are therefore not applicable, where there was no valid and final judgment. *N.L.R.B. v. Donna-Lee Sportswear Co., Inc.*, 836 F.2d 31, 34 (1st Cir. 1987).

CONCLUSION

Petitioners respectfully request this Court to grant Certiorari to review the issues.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS DATED APRIL 23, 1993

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.:
93-10051-H

RONALD RING, *ET AL.*,

Plaintiffs

v.

DEMETRIOS HASEOTES, *ET AL.*,

Defendants.

ORDER

April 23, 1993

HARRINGTON, D.J.

After a review of the file in the above-captioned case, the Court rules as follows:

1. Motion of Defendants Demetrios Haseotes, Lily H. Bentas, Byron Haseotes, George Haseotes, Peter Pantazelos, and John Peck, for Summary Judgment against Plaintiff Cheryl Adams is denied;

2. Motion of Defendants James Mumma and John Drolette

for Summary Judgment against Plaintiff Cheryl Adams is denied; and

3. Defendant Jon-Ray Associates, Inc.'s Request from Relief from the Production of Documents is denied.

SO ORDERED.

s/ Edward F. Harrington
EDWARD F. HARRINGTON
United States District Judge